

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KEITH TERRELL BUTLER,

Plaintiff,

**No. 08-cv-264
(GLS-DRH)**

v.

**NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES; J. HOGUE,
Correction Officer, Upstate Correctional
Facility; and J. HYDE, Correction Officer,
Upstate Correctional Facility,**

Defendants.

APPEARANCES:

OF COUNSEL:

KEITH TERRELL BUTLER
Pro Se
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ADELE M. TAYLOR-SCOTT, ESQ.

**Gary L. Sharpe
U.S. District Judge**

DECISION AND ORDER

The above-captioned matter comes to this court following a Report and Recommendation (“R&R”) by Magistrate Judge David R. Homer, filed October 22, 2008. (Dkt. No. 19.)¹ In his R&R, Judge Homer recommends that pro se defendant Keith Terrell Butler’s (“Butler”) Complaint, (Dkt. No. 1), be dismissed. Pending is Butler’s objection to the R&R. (Dkt. No. 20).

As this court has previously observed, before entering final judgment, the court reviews an R&R in cases it has referred to a Magistrate Judge. *See Anderson v. Banks*, No. 06-cv-0625, 2008 WL 3285917, at *1 (N.D.N.Y. Aug. 7, 2008). When a party objects to specific elements of the Magistrate Judge’s findings and recommendations, the court conducts a de novo review of those findings and recommendations. *See Id.*

Having reviewed this matter de novo, and determining that Butler may not bring an action against the Department of Correctional Services (“DOCS”) or DOCS’ officers in their official capacity, *see Farid v. Smith*, 850 F.2d 917, 920-21 (2d Cir. 1988), the court finds no error in Judge Homer’s determination that Eleventh Amendment immunity bars Butler’s

¹The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

complaint, thus, the court approves and adopts the R&R in its entirety.

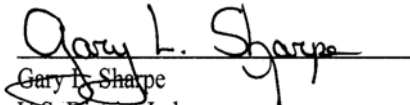
WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Butler's objections are overruled, Magistrate Judge Homer's October 22, 2008 R&R is adopted in its entirety and Butler's complaint is DISMISSED without prejudice for lack of subject matter-jurisdiction; and it is further

ORDERED that the Clerk enter judgment and provide copies of this Decision and Order to the parties.

IT IS SO ORDERED.

Albany, New York
November 25, 2008



Gary L. Sharpe
U.S. District Judge